IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1060 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BIPINBHAI NATUBHAI @ NAGINBHAIVAGHELA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1060 of 2000

MR ASHISH M DAGLI for Petitioner No. 1

MR PR ABICHANDANI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/08/2002

ORAL JUDGEMENT

1. This appeal arises out of a judgment and order rendered by the learned Additional Sessions Judge, Nadiad, on November 16, 2000, in Sessions Case No.139 of 1999, convicting the appellant for offences punishable under Sections 498-A and 306 of Indian Penal Code and

collectively sentensing him to underto rigorous imprisonment for five years and to pay fine of Rs.1000/ and, in default, to undergo simple imprisonment for three months.

2. The facts of the case can be narrated as under :-

2.1 The appellant was married to Manjulaben, daughter of Motibhai Bechardas somewhere around 1994. They were staying at Harijanvas in village Pij of Nadiad taluka. The appellant from the beginning was jobless and was not earning. In order that Manjulaben does not suffer along with him for want of basic amenities, it appears that he insisted for her to stay at her parental house, which she did not want to do and, therefore, on 1st February, 1999, Manjulaben committed suicide by setting herself ablaze. She was taken to hospital immediately. Her dying declaration was recorded by the police as well as by the Executive Magistrate. She, ultimately, succumbed to the burns. Motibhai Bechardas, father of the deceased, lodged a complaint with Dy.S.P., Nadiad, on 2nd February, 1999. On basis of the said complaint, an offence was registered and investigation made. The Investigating Officer, having found sufficient evidence to connect the appellant with the offence, filed charge sheet in the Court of learned Judicial Magistrate, First Class, Nadiad, who, in turn, committed the case to the Sessions Court as the offence was triable exclusively by a Court of Sessions.

2.2 The Sessions Court registered the case as Sessions Case No.139 of 1999. The charge was framed at Ex.7 for offences punishable under Section 498-A and 306 of Indian Penal Code. The accused pleaded not guilty to the charge and faced the trial.

2.3 The learned Additional Sessions Judge, after considering the evidence led by the prosecution, came to a conclusion that the prosecution was successful in establishing the charges against the accused-appellant and, therefore, recorded a conviction and sentenced the appellant as stated above. Aggrieved by the said judgment and order, the present appeal is preferred.

3. Learned Advocate, Mr. Dagli, appearing for the appellant submitted that the Trial Court has recorded a moral conviction. The two dying declarations recorded, one by the police and another by the Executive Magistrate, totally exonerate the appellant. There is nothing to indicate about any ill-treatment or even strained relations between the deceased and the

appellant. The evidence of the complainant-Motibhai Bechardas, father of the deceased, and Suryakant, brother of the deceased, are the only pieces of evidence which speak of ill-treatment which has weighed with the Trial Court as against deposition of mother of the deceased (Revaben), who categorically admits that the deceased never complained of any ill-treatment by the appellant to her. Mr. Dagli submitted that depositions of Motibhai and Suryakant deal with only past incidents and there is nothing to indicate any dispute between the deceased and the appellant in recent past of the incident. Mr. Dagli, therefore, urged that, according to him, conviction either for the offence punishable under Section 306 or for the offence punishable under Section 498-A of Indian Penal Code could not have been recorded. Mr. Dagli submitted that there are letters written by the deceased to the appellant, which reflect that relations were not strained and the learned Judge has proceeded on a premise that from the beginning of their marriage life, relations were strained and not smooth. These observations and conclusions derived from these observations do no find support from the record. Mr. Dagli, therefore, urged that this appeal may be allowed and the conviction may be set aside.

4. Learned Additional Public Prosecutor Mr. Abichandani has opposed this appeal. According to him, there is no reason to disbelieve the version of Motibhai Bechardas and Suryakant Motibhai even if deposition of Revaben is not accepted. Motibhai is the father, to whom deceased confided in and informed about the ill-treatment being meted out to her by the appellant. Likewise, Suryakant is the brother, who says that the deceased had confided in him on the day of Raksha Bandhan and told that the appellant used to ill-treat her and cause her physical and mental cruelty. Mr. Abichandani submitted that te possibility of Revaben being not informed by the deceased cannot be ruled out and, according to him, deposition of Revaben should be looked upon with more confidence as she has stated the truth. Otherwise, she could have very well said that the deceased had confided in her as well. Mr. Abichandani, therefore, urged that the appeal may be dismissed.

5. This Court has gone through the record and proceedings of the case. Learned Advocate Mr. Dagli has taken this Court through both the dying declarations (Ex.16 and 17) closely. He has also read over depositions of Motibhai Bechardas, Revaben Motibhai and Suryakant Motibhai, which are the only inculpating materials against the appellant, according to him.

6. Deposition of Motibhai Bechardas (Ex.24), if read, indicates that after the marriage, the deceased went to her matrimonial house after about one year and came back to her parental house within two months thereafter. She stayed at her parental house again for a period of about a year and a half. She had come back because of ill-treatment. He says that deceased-Manjula had told him that her husband was beating her. Motibhai says that he had written a letter to the appellant for settlement. The appellant came to fetch the deceased on apprehension that maintenance may be claimed by the deceased. Compromise was arrived at and, ultimately, the deceased went to her matrimonial house. At that time, she stayed there for about six to eight months. The condition remained the same and, therefore, she came back. She used to complain to him that there is taunting and demand of dowry. The deceased again stayed at her parental house for a year and a half. Again, there was a letter from the witness to the appellant. Again, she was taken to her matrimonial house. The witness says that he used to take care of the deceased by visiting her frequently, almost every month, but Manjula did not tell him anything. On the day of the incident, he was not informed and when he had learnt about it and went to her house, she was already cremated. He says that because Manjula did not conceive, the appellant used to taunt her and ask her to die.

6.1 The witness has been cross-examined and admits that he has not complained of any ill-treatment and harassment to the deceased by her husband either to the police or to the relatives. He also admits that he has not given any written notice to the appellant or his relatives about the ill-treatment. It appears that he has improved his version in his deposition about the appellant taunting the deceased and asking her to die. He admits during cross-examination that the deceased used to write love letters to her husband, i.e. the accused-appellant. He also admits that there was no dispute between them, but draws an inference that because of some dispute, she may have stopped writting letters.

7. Revaben Motibhai is examined at Ex.27. She clearly states that the deceased never complained of any ill-treatment from her in-laws, but she used to tell others about the ill-treatment and that is how she knows about the ill-treatment.

8. Suryakant, brother of the deceased, is examined at Ex.28 and he says that the deceased had told him on

the previous Raksha Bandhan day that the appellant ill-treats her. This he overheard while the deceased was talking to their mother. He has been cross-examined. He admits that he does not know anything about what had happened prior to the Raksha Bandhan day. He admits that he had taken no steps in relation to what he had learnt on the day of Raksha Bandhan.

9. From these oral depositions, what transpires is that out the marriage life of about five years, the deceased had stayed at her matrimonial house for a lesser period. and that too, piece meal. There is absolutely no evidence as to what had happened since last she went to her matrimonial house about six to eight months prior to the incident. On the contrary, deposition of Motibhai Becharbhai indicates that he used to visit her regularly every month and was never told about any problem by the deceased.

9.1 Mother-Revaban says that she was not told anything by the deceased but learnt about the same as the deceased had told others. Brother, Suryakant, says that he was told by the deceased but in cross-examination he says that he overheard the deceased telling their mother about ill-treatment. When Revaben says that she was not told anything by the deceased, the version of Suryakant gets falsified.

9.2 And, thus, there is no evidence of ill-treatment except the deposition of father Motibhai, who also admits that earlier disputes were resolved before the deceased last went to her matrimonial house and that despite his frequent and regular visits, the deceased did not tell him anything about ill-treatment.

10. Against these oral depositions, there are two pieces of evidence in the form of dying declarations. Ex.16 is the dying declaration recorded by the police on 1st February, 1999. The deceased says that she is married to the appellant about five years prior to the incident. Her in-laws stay at Mumbai. On the day of incident, she was alone at home. Her husband, that is the appellant, had gone to Nadiad. Her husband was jobless and they had no issue for about five years and, therefore, her husband felt that he would not be able to keep her happy and insisted for her to go to her parental house. She, however, did not approve of it and wanted to stay at her matrimonial house. She felt that her father may get her married somewhere else which she did not want to do. She became emotional therefor and had poured

kerosene on her person and set herself ablaze. She clearly states that there was no dispute in the family and no harassment was caused to her.

10.1 Another dying declaration came to be recorded by the Executive Magistrate, at Ex.17. In that dying declaration also, she says that she set herself ablaze. Her husband does not have a job and he was asking her to go to her parental house, but she did not want to go and, therefore, she set herself to fire. She says that she took this step out of impulse.

11. Taking an overall view of the evidence on record, there is hardly any material to come to a conclusion that the deceased committed suicide at the behest of or on instigation of the appellant or that the appellant abetted commitment of suicide by the deceased. No conviction could ever have been recorded on these pieces of evidence.

12. So far as the allegations of ill-treatment are concerned, there again, they are all of past whereafter there was settlement and there is no material for at least last six to eight months about any ill-treatment being meted out to the deceased by the appellant. Even the dying declarations make it clear specifically that there was no family dispute at all. It has also to be considered that neither Motibhai nor Suryakant took any step against the alleged ill-treatment by the appellant either in the form of a complaint either to the police or to the community people or in the form of any legal action. On the contrary, Motibhai admits that during his -frequent monthly visits to his daughter, she did not tell him about such ill-treatment.

12.1 The incident has taken place on 1st February, 1999. Suryakant speaks of the deceased having told him on the previous Raksha Bandhan day, which would be somewhere in August 1998 and he admits he is not aware about what had happened prior to the Raksha Bandhan. He admits to have overheard the deceased telling their mother, but mother says that the deceased did not tell her anything. These depositions, therefore, do not inspire any confidence and could not have been accepted as evidence to record conviction for offence punishable under Section 498-A either. The observation of the learned Judge that the deceased had to go to her parental house within short span of the marriage life indicates that the married life was not happy is also not founded on any evidence. Likewise, the observation that being unemployed and being not able to keep the deceased happy

itself is a cruelty also cannot be considered as proper.

13. In view of what is discussed above, in the view of this Court, the Trial Court committed an error in recording conviction for the offences punishable under Sections 306 and 498-A of Indian Penal Code as there are two dying declarations exonerating the appellant and the evidence of the witnesses relied upon by the Trial Court does not inspire any confidence. The judgment and order, therefore, deserves to be set aside by accepting this appeal.

14. The appeal is, therefore, allowed. The judgment and order of conviction and sentence dated the 16th November, 2000, passed by the learned Additional Sessions Judge, Nadiad, in Sessions Case No.139 of 1999 is set aside. The appellant is acquitted of the charges levelled against him. His bail bond shall stand cancelled. The fine, if paid, will be refunded to him.

[A.L. DAVE, J.]

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